# BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

WILLIAM RANDY FINK,

Claimant,

VS.

JENDRO SANITATION SERVICES, INC.,

Employer,

and

ACCIDENT FUND,

Insurance Carrier, Defendants.

FILED

JUL 3 0 2019

WORKERS COMPENSATION

File No. 5064659

ALTERNATE MEDICAL

CARE DECISION

HEAD NOTE NO: 2701

# STATEMENT OF THE CASE

This is a contested case proceeding under lowa Code chapters 85 and 17A. The expedited procedure of rule 876 IAC 4.48 is invoked by claimant, William Fink. Claimant appeared personally and through his attorney, Gary Nelson. Defendants appeared through their attorney, Laura Ostrander.

The alternate medical care claim came on for hearing on July 30, 2019. The proceedings were digitally recorded. That recording constitutes the official record of this proceeding. Pursuant to the Commissioner's February 16, 2015 Order, the undersigned has been delegated authority to issue a final agency decision in this alternate medical care proceeding. Therefore, this ruling is designated final agency action and any appeal of the decision would be to the Iowa District Court pursuant to Iowa Code section 17A.

The record consists of claimant's exhibits 1-4, which include a total of 9 pages. The record also contains defendants' exhibits A-B, which contain 6 pages. All exhibits were received without objection. Counsel for each party presented short opening statements or argument about the merits of this case. Claimant testified on his own behalf. No other witnesses were called to testify.

Defendants challenge whether notice of dissatisfaction was given by claimant prior to the filing of the petition for alternate medical care. Defendants also indicated that the requested treatment is being authorized. Nevertheless, defendants requested an opportunity to cross-examine claimant because a medical record in evidence

indicated that claimant does not desire the type of care now being sought. The undersigned permitted testimony by claimant to resolve this issue.

#### **ISSUE**

The issue presented for resolution is whether the claimant is entitled to a spinal cord stimulator trial, an MRI of the cervical spine, and a psychological evaluation in preparation for a spinal cord stimulator placement, all of which has been recommended by the authorized physician, Amy C. Pearson, M.D.

### FINDINGS OF FACT

The undersigned having considered all the evidence in the record finds:

William Fink sustained a work-related injury to his left arm and right arm on October 17, 2017. (Petition and Answer) Defendants authorized care for claimant's injuries through Amy C. Pearson, M.D., at the University of Iowa Hospitals and Clinics. Dr. Pearson's April 10, 2019 medical record indicates that Mr. Fink experiences phantom pain following a left arm amputation. (Claimant's Exhibit 1)

Dr. Pearson's medical record indicates that claimant has experienced some relief but not sufficient relief through medication management. Dr. Pearson recommends a spinal cord stimulator trial for Mr. Fink's symptoms. (Claimant's Ex. 1, page 5)

Defendants scheduled claimant for a second-opinion evaluation performed by Joseph J. Chen, M.D., on June 28, 2019. Dr. Chen recommended against a spinal cord stimulator for Mr. Fink and indicated within his report that Mr. Fink was not considering further surgical intervention. (Defendants' Ex. B, p. 3) Nevertheless, Dr. Chen indicated that he would defer surgical judgment to the surgeons at the University of lowa Hospitals and Clinics. (Defendants' Ex. B, p. 3)

Claimant testified that Dr. Chen misunderstood him during his evaluation. Claimant testified that he would like to proceed with a spinal cord stimulator trial, as recommended by Dr. Pearson.

Defendants are offering and authorizing the requested treatment, including the spinal cord stimulator trial, a cervical MRI, as well as a required psychological evaluation prior to the placement of a spinal cord stimulator. (Defendants' Ex. A) I find that defendants' offer is reasonable and appropriate under the circumstances. I find that the recommendations of the treating physician, Dr. Pearson, are reasonable and appropriate care for claimant's injury. I find that defendants' agreement to authorize this care renders all other factual issues moot.

# REASONING AND CONCLUSIONS OF LAW

The employer shall furnish reasonable surgical, medical, dental, osteopathic, chiropractic, podiatric, physical rehabilitation, nursing, ambulance and hospital services and supplies for all conditions compensable under the workers' compensation law. The employer shall also allow reasonable and necessary transportation expenses incurred for those services. The employer has the right to choose the provider of care, except where the employer has denied liability for the injury. Section 85.27. Holbert v. Townsend Engineering Co., Thirty-second Biennial Report of the Industrial Commissioner 78 (Review-Reopening, October 16, 1975).

By challenging the employer's choice of treatment – and seeking alternate care – claimant assumes the burden of proving the authorized care is unreasonable. <u>See</u> Iowa R. App. P 14(f)(5); <u>Bell Bros. Heating and Air Conditioning v. Gwinn</u>, 779 N.W.2d 193, 209 (Iowa 2010); <u>Long v. Roberts Dairy Co.</u>, 528 N.W.2d 122 (Iowa 1995). Determining what care is reasonable under the statute is a question of fact. <u>Long v. Roberts Dairy Co.</u>, 528 N.W.2d 122 (Iowa 1995). The employer's obligation turns on the question of reasonable necessity, not desirability. <u>Id.</u>; <u>Harned v. Farmland Foods, Inc.</u>, 331 N.W.2d 98 (Iowa 1983).

An application for alternate medical care is not automatically sustained because claimant is dissatisfied with the care he has been receiving. Mere dissatisfaction with the medical care is not ample grounds for granting an application for alternate medical care. Rather, the claimant must show that the care was not offered promptly, was not reasonably suited to treat the injury, or that the care was unduly inconvenient for the claimant. Long v. Roberts Dairy Co., 528 N.W.2d 122 (lowa 1995).

In this instance, there has been some delay in authorization of care between Dr. Pearson's recommendation and the date of the alternate medical care hearing. However, some of the delay was caused by defendants seeking a second opinion from Dr. Chen. The requested medical care has now been formally authorized by defendants. Therefore, the disputed issue is resolved and no further findings or conclusions are necessary.

## ORDER

# THEREFORE, IT IS ORDERED:

Defendants shall promptly authorize and schedule claimant for the treatment recommended by Amy Pearson, M.D., specifically including the requested cervical MRI, spinal cord stimulator, and psychological evaluation.

# FINK V. JENDRO SANITATION SERVICES, INC. Page 4

Failure to comply with this order and promptly authorize and schedule this care may result in revocation of defendants' statutory right to select the authorized medical provider(s) for claimant's injury.

Signed and filed this \_\_\_\_\_ 30<sup>th</sup> \_\_\_\_ day of July, 2019.

WILLIAM H. GRELL DEPUTY WORKERS' COMPENSATION COMMISSIONER

Copies to:

Gary B. Nelson Attorney at Law PO Box 637 Cedar Rapids, IA 52406-0637 gary@rushnicholson.com

Laura J. Ostrander Attorney at Law PO Box 40785 Lansing, MI48901-7985 Laura.ostrander@accidentfund.com

WHG/kjw